REMARKS/ARGUMENTS

Claims 1-20 are pending in the present application. Claims 1, 2, 10, 11, 19, and 20 were amended. These amendments are supported by the specification on page 15, line 18 through page 16, line 15. Reconsideration of the claims in light of these amendments and the following arguments is respectfully requested.

I. Examiner Interview

The Examiner is thanked for the courtesy of the telephonic interview held on October 23, 2006. The amendments to claim 1 and their distinctions over the art relied on were discussed. No agreement was reached.

II. 35 U.S.C. § 101

Claims 19 and 20 stand rejected under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

The Examiner asserts that claims 19 and 20 are not limited to tangible embodiments. No basis is present for holding a computer usable medium claim non-statutory because the medium may be allegedly "intangible." The MPEP states:

> In this context, "functional descriptive material" consists of **data structures** and computer programs **which impart functionality when employed as a computer component**. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.
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> **When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.** Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). **(emphasis added)**

MPEP 2106 (IV)(B)(1).

Claims 19 and 20 recite clearly functional descriptive material since it imparts functionality when employed as a computer component. Moreover, the functional descriptive material of claims 19 and 20 is stored on "some" computer-readable medium.

In the above context, the term "some" has the same meaning as "any" computer-readable medium. The MPEP does not draw any distinctions between one type of media that is considered to be statutory and another type of media that is considered to be non-statutory. To the contrary, the MPEP clearly states that as long as the functional descriptive material is in "some" computer-readable medium, it should be considered statutory. The only exceptions to this statement in the MEPE are functional descriptive material that does not generate a useful, concrete and tangible result, e.g., functional descriptive material composed completely of pure mathematical concepts that provide no practical result. Claims 19 and 20 clearly recited a useful, concrete and tangible result in that system information is sent to a device that indicates that the user associated with the device is available.

Thus, claims 19 and 20 are directed to functional descriptive material that provides a useful, concrete and tangible result, and which is embodied on "some" computer-readable medium. Therefore, claims 19 and 20 is statutory and the rejection of the claims under 35 U.S.C. § 101 has been overcome.

III. 35 U.S.C. § 102, Anticipation

Claims 1-20 stand rejected under 35 U.S.C. § 102 as anticipated by *Holt et al.* (WO 03/098449 Al), hereinafter **Holt**. This rejection is respectfully traversed. The rejection states:

> Regarding claim 1:
> Holt teaches:
> a plurality of notification units (paragraph 0017 lines 5-7);
> a network coupled to said plurality of notification units, said network operable to determine whether each notification unit of said plurality of notification units is available to receive system management information (Fig. 1 and paragraph 0030); and
> a plurality of management units coupled to said network (Fig. 3), at least one management unit of said plurality of management units operable to:
> generate said system management information (paragraph 0017 lines 1-3); determine an identity of an intended recipient for said system management information (paragraph 0024 lines 10-12);
> associate said identity with at least one notification unit of said plurality of notification units (paragraph 0017 lines 5-7 and paragraph 0030 lines 5-8); and
> determine whether said at least one notification unit is available to receive said system management information (paragraph 0030).

Office Action mailed September 27, 2006, page 3.

Claim 1 has been amended to recite that the steps performed are computer-implemented and that the system information is sent to the notification unit if the unit is available to receive the information. Claim 1 recites:

> 1. A data processing system for routing system management information, comprising:
> a plurality of notification units;

a network coupled to said plurality of notification units, said network operable to determine whether each notification unit of said plurality of notification units is available to receive system management information; and

a plurality of management units coupled to said network, at least one management unit of said plurality of management units configured to perform the steps:

generate said system management information;

determine an identity of an intended recipient for said system management information;

associate said identity with at least one notification unit of said plurality of notification units;

determine whether said at least one notification unit is available to receive said system management information; and

send said system management information to said at least one notification unit via a notification handler if said at least one notification unit is available to receive said system management information.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983).

Holt does not anticipate claim 1 because this reference does not identically show every element of the invention recited in claim 1. **Holt** does not disclose "*sending system management information to said at least one notification unit via a notification handler*", as recited in claim 1.

The following paragraphs of **Holt** are cited against the steps recited in claim 1:

> [0017] The presence availability notification system 100 also includes a notification server 140 that receives update messages from the presence availability server 110 concerning a change in the presence and availability status of User1. The notification server 140 then sends a notification message to the communication device 150 of User2 to notify User2 of a change in the online status of User1. The User2 communication device 150 includes any device that User2 can receive a notification message with, such as a PSTN phone, an email client, an instant messaging client, etc.
>
> [0024] The presence availability server 110 detects the change in the presence and availability status of User1, as depicted in block 250. For instance, the communication device 120 of User1 may inform the presence availability server 110 of a change in the online status of User1. Alternatively, the presence availability server 110 could poll the communication device 120 to determine the online status of User1. In step 255, the presence availability server 110 determines from the presence availability database 115 that User1 is being monitored by at least one other user, so the presence availability server 110 informs the notification server 140 of the change in the presence and availability

> status of Userl. Otherwise, the presence availability server 110 would not notify the notification server 140 of status changes for Userl. After a change, the notification server 140 retrieves from the profile database 145 the notification preferences from the profiles of users who have the userID of Userl in their profile.
>
> [0030] FIG. 4 is a service flow diagram for a representative implementation of one preferred embodiment of the invention for transmitting notification messages using instant messaging technology. FIG. 4 depicts the interactions between the notification server 140 & profile database 145 and the communication device 150 of User2, after a status change has been detected, as previously shown in FIG. 3. Here, the communication device 150 of User2 contains an instant messaging client 155. The instant messaging client 155 could be installed on a computer, a personal digital assistant (PDA), or any other device capable of providing instant messaging communications. In FIG. 4, the first action shown is the retrieval of the notification preferences specified in the profile of User2 from the profile database 145. From the notification preferences, the instant messaging address of User2 is obtained. The profile database 145 then transmits the instant messaging address of User2 to the notification server 140.

Holt, paragraphs 0017, 0024, and 0030.

Holt discloses the infrastructure that has the capability to detect the presence and availability of a user on a device. **Holt** does not disclose the generating and sending of system information. Paragraph 0017, cited against the generating step, generates and sends user information, i.e., whether or not the user is available on a given device. The information is not about the state of the system. Thus, **Holt** does not perform the "*computer-implemented steps: ... determine whether said at least one notification unit is available to receive said system management information; and send said system management information to said at least one notification unit via a notification handler if said at least one notification unit is available to receive said system management information*".

Therefore, **Holt** does not identically disclose every element of the invention of claim 1 and this reference does not anticipate claim 1. Claims 10 and 19 have been rejected for similar reasons to claim 1. Because the rejection of claim 1 has been overcome, the rejection of claims 10 and 19 has also been overcome. Further, because claims 2-9, 11-18, and 20 depend respectively from claims 1, 10, and 19, the same distinctions between **Holt** and the invention recited in claim 1 is true also for these claims. Additionally, many of the dependent claims contain additional recitations that distinguish over the art relied on.

For example, claim 2 recites, "*wherein said notification handler converts said system management information into a form that is appropriate for the notification unit*". **Holt** does not disclose or suggest that the information is converted to a specific format prior to sending to the receiving device. This claim separately distinguishes over the art relied on.

For a further example, claim 8 recites, "*wherein said intended recipient comprises at least one of an entity, party and person having a responsibility for responding to said system management information*". The rejection cites paragraph 17 of **Holt**, reproduced above. As shown in this excerpt, **Holt** is sending notifications that a person is present on a device. However, **Holt's** communications are for information only and do not disclose or suggest that the intended recipient has a responsibility to respond to the communications sent. Therefore, this claim separately distinguishes over the art relied on.

Consequently, the rejection of claims 1-20 have been overcome. Furthermore, **Holt** does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. **Holt** is only concerned with notifying a user of a second user's availability; **Holt** does not express concern about the need to send system information. Absent the examiner pointing out some teaching or incentive to implement **Holt** with a computer-implemented notification of system information, one of ordinary skill in the art would not be led to modify **Holt** to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify **Holt** in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

IV. Conclusion

It is respectfully urged that the subject application is patentable over **Holt** and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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